

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

FRANK HOHN,)	
)	
Plaintiff,)	8:05CV552
)	
v.)	
)	
BNSF RAILWAY COMPANY,)	ORDER
)	
Defendant.)	
)	

This matter is before the Court on defendant BNSF Railway Company's ("the Railroad") renewed and amended motion for reconsideration of Filing No. [99](#), the Court's memorandum and order, granting in part and denying in part the Railroad's motion for summary judgment ("memorandum and order") (Filing No. [161](#)). Upon review of the motion, the parties' briefs and evidentiary submission, and the applicable law, the Court will deny the Railroad's renewed and amended motion for reconsideration.

Originally, this action included claims for disability discrimination and retaliation pursuant to the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, the Nebraska Fair Employment Practices Act ("NFEPA"), Neb. Rev. Stat. § 48-1101, and unspecified federal and state whistle-blower protection statutes. The Court's memorandum and order found: (1) there were no genuine issues of material fact concerning plaintiff's retaliation claim and claims for relief under state or federal "whistle-blower" statutes; (2) there were genuine issues of material fact with respect to plaintiff's disability discrimination claims and the ultimate issues of whether

plaintiff could perform the essential functions of his job with accommodations, what the potential accommodations were, the reasonableness of any such accommodations, the direct threat defense, and the Railroad's good faith; and (3) plaintiff's claims under the NFEPA were timely filed and plaintiff did not fail to exhaust his administrative remedies with respect to his claims of disparate treatment or failure to accommodate under the ADA (Filing No. [99](#)).

The Railroad's renewed and amended motion for reconsideration of the Court's memorandum and order claims: (1) the Court failed to find the material facts submitted by the Railroad that were not disputed by plaintiff were deemed admitted in accordance with NECivR 56.1(b)(1); (2) the Court erred in finding that there was a genuine issue of material fact as to whether the Railroad failed to provide a reasonable accommodation; and (3) the Court erred in failing to find that the claims under the NFEPA were barred by the statute of limitations.

Under Neb. Civ. R. 60.1, "[m]otions for reconsideration are disfavored, and the court will ordinarily deny them without a showing of (1) manifest error in the prior ruling, or (2) new facts or legal authority, neither of which could have been brought to the court's attention earlier with reasonable diligence." Neb. Civ. R. 60.1(c). The Railroad has not shown the Court made a manifest error in its memorandum and order, nor has the Railroad shown that new facts or legal authority have arisen that would have had bearing on the Court's memorandum and

order. Therefore, the Court will deny the Railroad's renewed and amended motion for reconsideration. Accordingly,

IT IS ORDERED that defendant's renewed and amended motion for reconsideration of Filing No. [99](#), the Court's memorandum and order granting in part and denying in part the Railroad's motion for summary judgment (Filing No. [161](#)) is denied.

DATED this 3rd day of November, 2010.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court